

The CSKT Compact, “Boiled Down”

1. All stock rights 100% protected on- and off-Reservation – Tribes CANNOT call. Compact Art. III.G.1.*
2. All municipal rights 100% protected on- and off-Reservation – Tribes CANNOT call. Compact Art. III.G.1.
3. All domestic rights 100% protected on- and off-Reservation – Tribes CANNOT call. Compact Art. III.G.1.
4. All commercial and industrial rights 100% protected on- and off-Reservation – Tribes CANNOT call. Compact Art. III.G.1.
5. All other non-irrigation rights 100% protected on- and off-Reservation – Tribes CANNOT call. Compact Art. III.G.1.
6. All groundwater irrigators with flow rates of 100gpm or less 100% protected on- and off-Reservation – Tribes CANNOT call. Compact Art. III.G.2.
7. The Compact does NOT change jurisdiction over anything off the Reservation – the Tribes get NO new say over water rights, water quality, species management or anything else off the Reservation. Compact Art. IV.C.1, V.B.22.

Off Reservation impacts

8. In Basin 76D (Kootenai), the Tribes’ instream flow right:
 - a. Cannot be enforced at all so long as Libby Dam remains in place (and NO ONE is talking about removing Libby Dam). Compact Art. III.D.1.e.
 - b. Is set at an enforceable daily flow level that allows it to be satisfied with minimal risk to existing irrigators in the unlikely event that Libby Dam were ever removed. See Kootenai Instream flow Right Enforceable Daily Flows, Appx. 25.
 - c. Can only be enforced against mainstem surface water irrigators and groundwater irrigators with flow rate greater than 100gpm – NOT anyone on tributaries (including Glen Lake Irrigation District, which is thus 100% protected). Compact Art. III.D.1.g.
9. In Basin 76N (Lower Clark Fork), the Tribes’ instream flow right:
 - a. Is set at the identical level of the FERC license condition on Cabinet Gorge Dam (5000cfs) – therefore as long as Avista is in compliance with its FERC license, the Tribes’ right is satisfied and cannot be used to make a call. Compact Art. III.D.3.g.
 - b. If the FERC license condition changes, the enforceable level of the Tribes’ right changes right along with it; again, FERC compliance=right satisfied=no call. Compact Art. III.D.3.g.

* References are to Compact and Appendices which may be accessed at: <http://dnrc.mt.gov/rwrcc/Compacts/CSKT/Default.asp>

- c. Can only be enforced against mainstem surface water irrigators and groundwater irrigators with flow rate greater than 100gpm – NOT anyone on tributaries. Compact Art. III.d.3.e.

10. In Basin 76K (Swan), the Tribes' instream flow right:

- a. Is measured at the mouth of Bigfork Lake, dramatically reducing the likelihood of call. See Swan Mainstem Abstract, Appx. 26.
- b. Is set at a sufficiently low level that under most conditions Pacific Power would be entitled to call to satisfy its hydro right before the Tribes could be calling to satisfy their instream flow right, Appx. 26
- c. Can only be enforced against surface water irrigators and groundwater irrigators with flow rate greater than 100gpm (tributaries are in play here). Compact Art. III.D.2.e.

11. In Basin 76H (Bitterroot), the Tribes are settling for *no* water rights of their own, instead:

- a. FWP will have to manage their contracts for stored water out of Painted Rocks and Como in a biologically responsible manner (which is they are currently required to do) – NO change for existing irrigators. Compact Art. III.D.6.a. – c.
- b. Tribes to become co-owners with FWP of existing FWP recreation rights in mainstem of Bitterroot – NONE of the other attributes of those rights (including priority date and flow rate) is being changed. Compact Art. III.D.4.a.ii., Appx. 29.

12. In Basin 76I (Middle Fork Flathead), 76J (South Fork Flathead) 76L (Flathead below the Lake) and 76LJ (Flathead above and including the Lake), the Tribes are agreeing to NO new off-reservation water rights (Compact Art. III.G.4) and:

- a. Not to call any irrigator on any tributary (e.g. Stillwater, Whitefish, Little Bitterroot – all 100% protected). Compact Art. III.G.4.c.
- b. Any call can only be enforced against mainstem surface water irrigators and groundwater irrigators with flow rate greater than 100gpm or those on the North, South or Middle Forks (just under 100 water rights in total) – there are no historic recorded flow conditions that have been identified that come close to the level that would allow the Tribes to make a call up the Flathead. Compact Art. III.G.4.a., b.
- c. To become co-owners of some FWP rights on the mainstem of the Flathead and the N/S/M Forks - NONE of the other attributes of those rights (including priority date and flow rate) is being changed. Compact Art. III.D.4.a.i.,ii, Appx. 28, 29.

13. In Basin 76M (Middle Clark Fork), 76E (Rock Creek), 76F (Blackfoot) and 76GJ (Flint Creek), the Tribes are agreeing to NO new off-reservation water rights and instead:

- a. Becoming co-owners with FWP of the former Milltown Dam hydro right. Compact Art. III.D.5.b, Appx. 30-31.

- b. The enforceable level of the Milltown right would be reduced from the current 2000cfs flatline hydro level to a shaped hydrograph that bottoms out at 500 cfs measured at the USGS gage at Turah (for the Upper Clark Fork, including Rock and Flint Creeks) and 700 cfs at Bonner (for the Blackfoot). Compact Art. III.D.5.a.v., Appx 30, 31.
 - c. The 700 cfs is the same flow rate as the FWP Murphy right that currently is the trigger for the Blackfoot Drought Response Plan (though with a significantly earlier priority date – 1904 rather than 1971).[†]
 - d. For the first 10 years after the legislature ratifies the Compact, neither FWP nor the Tribes could enforce this right (intent is to allow for stakeholder planning). Compact Art. III.D.5.c.
 - f. After the 10 year planning period, call may only be made on the day following a five consecutive day period in which four out of five average daily river flows fall below their respective daily enforceable hydrograph values, and must be lifted when at least two average daily flows of the previous five day period are in excess of their respective enforceable hydrograph values. Compact Art. III.D.5.a.vi.
 - g. Tribes also to become co-owners with FWP of FWP Murphy and Recreation rights in the Blackfoot – NONE of the other attributes of those rights (including priority date and flow rate) is being changed. Compact Art. III.D.4.a., Appx. 28-29.
14. In exchange for the foregoing, the Tribes are agreeing to relinquish any other claim they might have under federal law to off-reservation water rights ANYWHERE in Montana. Compact Art. VII.D.1., 2.

On-Reservation jurisdiction

15. Proposed Water Management Board (WMB) will have jurisdiction only ON the Reservation – NO jurisdiction over any water rights (or anything else) off the Reservation. Compact Art. IV.C.1., V.B.22.
16. Proposed WMB fills regulatory void that currently exists on the Reservation and keeps the State at the table for future development of water on the Reservation, unlike in every other State-Tribal compact, in which the Tribe retained exclusive control over all on-reservation permitting, while State retained control of *existing* state-based permits. See §§ 85-20-201, 301, 601, 901, 1001, 1501, MCA.
- b. WMB composed of five voting members – two appointed by governor, two by Tribes and the fifth by the other four. Compact Art. IV.C.2.a.
 - c. WMB must apply Unitary Management Ordinance (drafted jointly by State and Tribes and based on Montana Water Use Act. Ordinance can only be amended if *both* MT Legislature and Tribes enact the amendment). Compact Art. IV.C.4., IV, D, and Appx. 4: Proposed Administration and Management Ordinance § 1-1-101(3).

[†] See Blackfoot Drought Response Plan, available at MTFWP website:
<http://fwp.mt.gov/doingBusiness/reference/managementPlans/waterbodies.html>

- d. Everyone comes before the WMB equally – no special rules for tribal members.
Compact Art. IV.C.8., Proposed Administration and Management Ordinance, Appx. 4.

On-reservation irrigators

17. FIIP Water Use Agreement intended to provide protection for Project irrigators

- a. Has been negotiated and agreed to between Tribes, U.S., and FJBC, but has not been brought to a vote of FJBC or project irrigators due to litigation seeking to enjoin such vote. See Proposed FIIP Water Use Agreement, Appx. 3.
- b. Critical part of settlement – Compact or associated agreement must ensure continued delivery of project water and provide protections for irrigators.

18. Non-Project irrigators on lands interspersed with Project sources and place of use:

- a. Voluntary process for these irrigators to enter into agreement with Tribes and Project to use water on same terms as Project users – if agreement is entered into, irrigation use is protected from call. Compact Art. III.G.3.c.
- b. Irrigators who choose not to enter into voluntary agreements are susceptible to call.

19. Non-Project irrigators away from Project

- a. Tribes agree to defer enforcing instream flow rights for on-reservation streams identified as “Other Instream Flows” until after final Basin 76L and 76LJ decrees are issued.
Compact Art. III.C.1.d.iii, Appx. 4, Unitary Management Ordinance § 2-1-115(3), Appx. 12, “Other Instream Flow Abstracts” issue remarks.
- b. Any enforceable instream flow schedule developed after decrees are final must be set at levels that protect all decreed water rights, including irrigators – water users have opportunity to object to any proposed flow schedule on adverse effect grounds. Appx. 4, Unitary Management Ordinance § 2-1-115(3), (8), (9).